

LICENSING COMMITTEE

At a Meeting of the Licensing Committee held in Committee Room 3, Council Offices, Garshake Road, Dumbarton on Wednesday, 28 August 2013 at 10.00 a.m.

Present: Provost Douglas McAllister and Councillors Jim Brown, Jim Finn, Jonathan McColl, Lawrence O'Neill, Tommy Rainey and Martin Rooney.

Attending: David McCulloch, Section Head (Trading Standards & Licensing); Robert Mackie, Senior Officer (Licensing Services), James McArthur, Licensing Officer (Enforcement); Tony Cairns, Team Leader (Trading Standards); Nigel Ettles, Principal Solicitor and Nuala Borthwick, Committee Officer, Legal, Democratic and Regulatory Services.

Apology: An apology for absence was intimated on behalf of Councillor John Mooney.

Councillor Lawrence O'Neill in the Chair

CHAIR'S REMARKS

Having heard the Chair, Councillor O'Neill, it was agreed that the item entitled, 'Application for Renewal of Second Hand Motor Vehicle Dealer's Licence' would be continued to the next meeting of the Committee.

DECLARATION OF INTEREST

Provost McAllister declared a non-financial interest in the item entitled, 'Hearing regarding possible suspension of a Taxi/Private Hire Car Driver's Licence' in relation to Mr Mark Burns and advised that he would take no part in the Committee's decision in relation to this item.

MINUTES OF PREVIOUS MEETING

The Minutes of Meeting of the Licensing Committee held on 1 May 2013 were submitted and approved as a correct record.

HEARING REGARDING POSSIBLE SUSPENSION OF A TAXI DRIVER'S LICENCE

A report was submitted by the Head of Legal, Democratic and Regulatory Services requesting consideration of a request for a suspension of a Taxi Driver's Licence held by Mr Allan MacLeod.

Having heard the Principal Solicitor, it was noted:-

- (a) that in February 2013, the Licensing Team were advised of an incident which had taken place involving Mr MacLeod on 19 September 2012 at Geisland School in Beith, North Ayrshire, while he was carrying out a school contract on behalf of West Dunbartonshire Council;
- (b) that witnesses to the incident had subsequently been interviewed at Geisland School by Mr James McArthur, Licensing Officer and Mr Robert Mackie, Senior Licensing Officer on 17 April 2013;
- (c) that Mr McLeod had subsequently been interviewed by Mr James McArthur, Licensing Officer and Mr Robert Mackie, Senior Licensing Officer on 18 April 2013;
- (d) that due to the nature of the complaint, it had been decided that a hearing should take place to consider the possible suspension of Mr McLeod's taxi driver's licence;
- (e) that a licensing authority must, before deciding to suspend a licence, give the holder of the licence, any complainer and the Chief Constable an opportunity to be heard;
- (f) that Mr McLeod, the witnesses and representatives from Educational Services had been invited to the meeting in order that a hearing may take place;
- (g) that the matters which the Committee was required to consider were as follows:-
 - (i) whether the alleged misconduct had been established;
 - (ii) if the Committee was satisfied that the alleged misconduct had been established, whether, having regard to the misconduct, Mr McLeod was no longer a fit and proper person to hold a taxi driver's licence;
 - (iii) if the Committee was of the opinion that Mr McLeod was no longer a fit and proper person, then the Committee must consider whether his licence should be suspended;
 - (iv) if the Committee was satisfied that the licence should be suspended, the Committee must give Mr McLeod an opportunity to be heard on the length of the suspension and the date from which the suspension should commence;

- (iv) the Committee must then consider what length of suspension would be appropriate and whether the circumstances of the case would justify immediate suspension.

It was noted that Mr MacLeod and representatives for Educational Services, Ms Vicki McGraw and Mrs Susan Milne, were in attendance. It was also noted that witnesses of the incident at Geisland School, Mr Robert Frew, Ms Mary Phillips, Ms Wilma Smith and Mr James Curran, were also in attendance.

Thereafter, at the request of the Chair, the Committee heard from Ms McGraw, Quality Improvement Officer in relation to the steps taken by Educational Services following notice of the complaint from Geisland School. Ms McGraw then answered questions from Members clarifying that Educational Services had decided that Mr MacLeod be removed from the Council's contract with Old Kilpatrick Taxis however the contract could continue with another driver from the taxi company. She advised that Mr MacLeod, as owner of Old Kilpatrick Taxis, made the decision to remove the company from the contact with the Council's Educational Services.

Thereafter, the Committee heard from Mr McArthur in relation to the circumstances of the incident concerning Mr MacLeod who answered questions from Members on the circumstances relating to the incident.

ADJOURNMENT

Having heard the Chair, Councillor O'Neill, the Committee agreed to adjourn for a short period to allow an email from Mr MacLeod to Educational Services to be copied and circulated to Members of the Committee.

The meeting resumed at 11.40 a.m. with all Members listed on the sederunt present.

The Committee were then given an opportunity to ask questions of the witnesses to the incident at Geisland School and it was clarified when witness statements had been taken.

Thereafter, Mr MacLeod, the licence holder was invited to come forward and addressed the Committee on the circumstances relating to the complaint made against him.

- DECIDED:**
- (1) that the alleged misconduct on the part of Mr MacLeod had not been established; and
 - (2) that no action be taken in relation to the possible suspension of Mr MacLeod's taxi driver's licence.

Note: Councillor Rooney left the meeting at this point in the proceedings.

DECLARATION OF INTEREST

Having declared a non-financial interest in the following item of business, Provost McAllister left the meeting at this point.

HEARING REGARDING POSSIBLE SUSPENSION OF A TAXI DRIVER'S LICENCE

A report was submitted by the Head of Legal, Democratic and Regulatory Services requesting consideration of a request for a suspension of a Taxi Driver's Licence held by Mr Mark Burns.

Having heard the Principal Solicitor, it was noted:-

- (a) that on 9 May 2013, a letter had been received from the Chief Constable of Police Scotland requesting the suspension of the Taxi Driver's Licence held by Mr Mark Burns under Paragraph 11(2)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the grounds that Mr Burns was no longer a fit and proper person to be the holder of a Taxi Driver's/Private Hire Car Driver's Licence;
- (b) that a licensing authority must, before deciding to suspend a licence, give the holder of the licence and the Chief Constable an opportunity to be heard;
- (c) that in view of the request for suspension of the licence received from the Police, the licence holder and a representative from the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (d) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting; and
- (e) that the matters which the Committee was requested to consider were as follows:-
 - (i) whether the alleged misconduct had been established;
 - (ii) if the Committee was satisfied that the alleged misconduct had been established, whether, having regard to the misconduct, Mr Burns was no longer a fit and proper person to hold a taxi driver's licence;
 - (iii) if the Committee was of the opinion that Mr Burns was no longer a fit and proper person, then the Committee must consider whether his licence should be suspended;
 - (iv) if the Committee was satisfied that the licence should be suspended, the Committee must give Mr Burns the opportunity to be heard on the length of the suspension and the date from which the suspension should commence; and

- (v) the Committee must then consider what length of suspension would be appropriate and whether the circumstances of the case would justify immediate suspension.

It was noted that the licence holder and representatives of the Police authority, Inspector Colin Cooper and Ms Joan Walker, were in attendance.

The Committee then heard from Inspector Cooper who provided details of the offences committed by Mr Burns and in relation to the request for suspension of the licence which had been submitted.

Thereafter the licence holder was invited to come forward. Mr Burns was given the opportunity to address the Committee on the circumstances relating to the offences as detailed in the letter from the Police authority. Mr Burns then answered questions from Members.

- DECIDED:**
- (1) that the alleged misconduct had been established; and
 - (2) that the misconduct did not form grounds for suspending Mr Burns licence and that no action be taken at this time in relation to the request for suspension of the licence.

Note: Provost McAllister re-entered the meeting at this point.

APPLICATION FOR GRANT OF TAXI/PRIVATE HIRE CAR DRIVER'S LICENCE

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Mr Gary McArthur Flat 0/1 66 Onslow Road Clydebank G81 2PN	26 April 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Taxi/Private Hire Car Driver's Licence by the above named person.

Having heard the Principal Solicitor in further explanation of the report, it was noted:-

- (a) that a letter had been received from the Chief Constable of the Police authority making an objection in relation to the application;
- (b) that in view of the objection which had been received from the Police, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;

- (c) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting; and
- (d) that the applicant and representatives of the Police authority, Inspector Cooper and Ms Joan Walker, were in attendance.

Inspector Cooper was then heard in relation to the objection and in answer to questions from Members. The applicant was then given the opportunity to address the Committee in support of his application and he explained the background with respect to the incidents referred to in the letter from the Police.

DECIDED: That the application be granted.

ADJOURNMENT

Having heard the Chair, Councillor O'Neill, the Committee agreed to adjourn for a short period to allow the scheduled meeting of the Planning Committee to be convened.

The meeting resumed at 12.12 p.m. with Councillors Brown, McColl and O'Neill present.

(b) Name and Address of Applicant Date Applied

Mr Stuart McGill 34 Craigielea Road Duntocher Clydebank G81 6JJ	21 June 2013
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A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Taxi/Private Hire Car Driver's Licence by the above named person.

DECIDED: That consideration of the application be continued to the next meeting.

(c) Name and Address of Applicant Date Applied

Mr Peter McNamee 10F Langfaulds Crescent Faifley Clydebank G81 5HQ	13 June 2013
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A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Taxi/Private Hire Car Driver's Licence by the above named person.

Having heard the Principal Solicitor in further explanation of the report, it was noted:-

- (a) that a letter had been received from the Chief Constable of the Police authority making a representation in relation to the application;
- (b) that in view of the representation which had been received from the Police, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (c) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting; and
- (d) it was noted that the applicant and representatives of the Police authority, Inspector Colin Cooper and Ms Joan Walker, were in attendance.

Inspector Cooper was then heard in relation to the representation and in answer to questions from Members. The applicant was then given the opportunity to address the Committee in support of his application and he explained the background with respect to the incidents referred to in the letter from the Police.

DECIDED: That the application be granted.

APPLICATION FOR RENEWAL OF TAXI/PRIVATE HIRE CAR DRIVER'S LICENCE

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	James Murray 348 Halley Street Yoker Glasgow G13 4DT	15 May 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for renewal of a Taxi/Private Hire Car Driver's Licence by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter from the Chief Superintendent making a representation in relation to the application, had been received on 13 June 2013. In terms of the relevant legislation, a representation with respect to an application should be submitted within 28 days of receipt of the application. As Mr Murray's application was submitted on 15 May 2013, any representation should have been submitted by 12 June 2013. There was, however, provision in the legislation for the Licensing Authority to entertain a late representation which has been received before a final decision has been made on the application if the Licensing Authority was satisfied that there had been sufficient reason why the representation had not been made in the time required;
- (b) that in view of the representation which had been received from the Police, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (c) that it would be a matter for the Committee to decide initially whether the late representation from the Police should be taken into consideration; and
- (d) that the terms of the letter from the Police authority would be made known to the Committee as appropriate.

It was noted that the applicant and representatives of the Police authority, Inspector Cooper and Ms Walker, were in attendance.

The Committee heard from Inspector Cooper, who explained why the Police representation had been submitted outwith the statutory period.

The Committee agreed that the Police representation would be taken into consideration. Copies of the letter from the Police were accordingly circulated to Members of the Committee.

The Committee heard Inspector Cooper in relation to the representation and in answer to Members' questions. Mr Murray was then given the opportunity to address the Committee in support of the application and in connection with the circumstances relating to the matters detailed in the Police letter.

DECIDED: That the application be granted.

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	John MacDonald 40 Whitecrook Street Clydebank G81 1QR	17 June 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for renewal of a Taxi/Private Hire Car Driver's Licence by the above named person.

Having heard the Principal Solicitor in further explanation of the report, it was noted:-

- (a) that a letter had been received from the Chief Constable of the Police authority making a representation in relation to the application;
- (b) that in view of the representation which had been received from the Police authority, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (c) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting; and
- (d) that the applicant and representatives of Police Scotland, Inspector Cooper and Ms Walker, were in attendance at the meeting.

Inspector Cooper was then heard in relation to the representation and in answer to questions from Members. It was noted that in relation to a pending case a trial diet had been fixed for 30 October 2013. The applicant was then given the opportunity to address the Committee in support of his application.

DECIDED: That the application be refused on the ground that the applicant was not a fit and proper person to be the holder of a Taxi/Private Hire Car Driver's Licence.

APPLICATION FOR GRANT OF WINDOW CLEANER'S LICENCE

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Paul Flanagan 11/7 Steven Street Alexandria G83 0PT	15 March 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Window Cleaner's Licence.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect to the application;
- (b) that in view of the representation which had been received from the Police, the applicant and a representative of the Police authority had

been invited to attend the meeting in order that a hearing may take place;

- (c) that the letter from the Chief Superintendent making a representation in relation to the application, had been received on 24 April 2013. In terms of the relevant legislation, a representation with respect to an application should be submitted within 28 days of receipt of the application. As Mr Flanagan's application was submitted on 15 March 2013, any representation should have been submitted by 12 April 2013. There was, however, provision in the legislation for the Licensing Authority to entertain a late representation which has been received before a final decision has been made on the application if the Licensing Authority was satisfied that there had been sufficient reason why the representation had not been made in the time required;
- (d) that it would be a matter for the Committee to decide initially whether the late representation from the Police should be taken into consideration; and
- (e) that a letter had been received from the Police authority detailing convictions against the applicant that were considered "spent" in terms of the Rehabilitation of Offenders Act 1974 and that it was for the Committee to decide whether or not the letter detailing the spent convictions should be disclosed and taken into consideration;
- (f) that the terms of the letters from the Police authority would be made known to the Committee as appropriate.

It was noted that the applicant and representatives of the Police authority, Inspector Cooper and Ms Walker, were in attendance.

The Committee heard from Inspector Cooper, who explained why the Police representation had been submitted outwith the statutory period.

The Committee agreed that the Police representation would be taken into consideration. Having heard the Principal Solicitor with regard to the number, age, degree of seriousness and relevance of the spent convictions the Committee agreed that the letter from the Police authority detailing the spent convictions should be circulated and taken into account. Copies of the letters from the Police were accordingly circulated to Members of the Committee.

The Committee then heard Inspector Cooper in relation to the representation and in answer to Members' questions. Mr Flanagan was then given the opportunity to address the Committee in support of the application and in connection with the circumstances relating to the matters detailed in the Police letters.

DECIDED: That the application be granted.

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
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John Montgomery
118 Cardross Road
Dumbarton
G82

12 April 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Window Cleaner's Licence.

Having heard the Principal Solicitor in further explanation of the report, it was noted:-

- (a) that a letter had been received from the Chief Constable of the Police authority making a representation in relation to the application;
- (b) that in view of the representation which had been received from the Police, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (c) that copies of the letter of representation from the Police authority had been issued to Members of the Committee in advance of the meeting;
- (d) that a further letter had been received from the Police authority detailing convictions against the applicant that were considered "spent" in terms of the Rehabilitation of Offenders Act 1974 and that it was for the Committee to decide whether or not the letter detailing the spent convictions should be disclosed and taken into consideration;
- (e) that the spent convictions could not be considered by the Committee unless there was no other way of justice being done;
- (f) that the terms of the letter from the Police authority detailing the applicant's spent convictions would be made known to the Committee as appropriate; and
- (g) it was noted that the applicant and representatives of the Police authority, Inspector Cooper and Ms Joan Walker, were in attendance.

Having heard the Principal Solicitor with regard to the number, age, degree of seriousness and relevance of the spent convictions, the Committee agreed that the letter detailing the applicant's spent convictions would be taken into consideration. Copies of the letter from the Police were accordingly circulated to Members of the Committee.

The Committee then heard from Inspector Cooper in relation to the representation and in answer to Members questions. Mr Montgomery was then given the opportunity to address the Committee in support of his application.

DECIDED: That the application be refused on the grounds that the applicant was not a fit and proper person to hold a window cleaner's licence.

Note: Councillors Finn and Rainey re-entered the meeting during consideration of the above item.

APPLICATION FOR GRANT OF EMPLOYEE STREET TRADER'S LICENCE

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Scott Ryan McDonald 40 Carvale Avenue Salsburgh ML7 4NF	12 March 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for Grant of an Employee Street Trader's Licence.

It was noted that a letter had been received from the Chief Superintendent of the Police Authority making a representation with respect to the application. It was further noted that the applicant and a representative of the Police authority had been invited to the meeting and that Mr McDonald was not present at the meeting.

DECIDED: That it was not necessary to hear from the representative of the Police authority and that the application be refused on the grounds that the applicant had failed to attend the meeting of the Committee at which the application was to be determined.

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Umrhan Ahmad Flat 3/1 12 Kelvingrove Street Finnieston Glasgow G3 7RX	7 March 2013

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of an Employee Street Trader's Licence.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making an objection with respect to the application;

- (b) that in view of the objection which had been received from the Police, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (c) that the letter from the Chief Superintendent making an objection in relation to the application, had been received on 3 May 2013. In terms of the relevant legislation, an objection with respect to an application should be submitted within 28 days of receipt of the application. As Mr Ahmad's application was submitted on 7 March 2013, any objection should have been submitted by 4 April 2013. There was, however, provision in the legislation for the Licensing Authority to entertain a late objection which has been received before a final decision has been made on the application if the Licensing Authority was satisfied that there had been sufficient reason why the objection had not been made in the time required;
- (d) that it would be a matter for the Committee to decide initially whether the late objection from the Police should be taken into consideration;
- (e) that a letter had been received from the Police authority detailing convictions against the applicant that were considered "spent" in terms of the Rehabilitation of Offenders Act 1974 and that it was for the Committee to decide whether or not the letter detailing the spent convictions should be disclosed and taken into consideration; and
- (f) that the terms of the letters from the Police authority would be made known to the Committee as appropriate.

It was noted that the applicant and representatives of the Police authority, Inspector Cooper and Ms Walker, were in attendance.

The Committee heard from Inspector Cooper, who explained why the Police objection had been submitted outwith the statutory period.

The Committee agreed that the Police objection would be taken into consideration. Having heard the Principal Solicitor with regard to the number, age, degree of seriousness and relevance of the spent convictions, the Committee agreed that the letter from the Police authority detailing the spent convictions should be circulated and taken into account. Copies of the letters from the Police were accordingly circulated to Members of the Committee.

The Committee then heard Inspector Cooper in relation to the objection and in answer to Members' questions. Mr Ahmad was then given the opportunity to address the Committee in support of the application and in connection with the circumstances relating to the matters detailed in the Police letters.

DECIDED: That the application be granted.

APPLICATION FOR VARIATION TO A LATE HOURS CATERING LICENCE

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for variation of an existing Late Hours Catering Licence submitted by Leven Vale Restaurants trading as McDonald's Restaurant, 27 Glasgow Road, St. James Retail Park, Dumbarton G82 1RB.

DECIDED: It was noted that the application had been withdrawn.

REVIEW OF LICENCE FEES

A report was submitted by the Head of Legal, Democratic and Regulatory Services:-

- (a) providing information on the income and expenditure associated with various types of licensing functions; and
- (b) seeking agreement on principles that should govern a review of the fees charged to applicants.

DECIDED: (1) that the Council should seek to achieve full cost recovery when setting licence fees; and

(2) that a further report setting out a revised fee structure that meets that requirement and is fair would be submitted to a future meeting of the Committee.

PROPOSED LICENSING SCHEME FOR BOAT HIRERS

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning a report by the Marine Accident Investigation Branch and recommending a response to the recommendation contained within it.

DECIDED: In principle, to introduce a licensing scheme for boat hirers throughout West Dunbartonshire, subject to a final decision being made at a later date when a report would be presented to the Committee describing how such a scheme might operate.

The meeting closed at 1.40 p.m.